

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**SECOND AMENDMENT ARMS, et al.,)
Plaintiffs,) No. 10-CV-4257
v.) Judge Robert M. Dow, Jr.
CITY OF CHICAGO, et al.,)
Defendants.)**

**DEFENDANTS' LOCAL RULE 56.1(a)(3) STATEMENT
OF UNDISPUTED MATERIAL FACTS**

Defendants City of Chicago (the “City”), Mayor Rahm Emanuel, Superintendent of Police Eddie Johnson, and City Clerk Susana Mendoza (collectively, “Defendants”), by their counsel, Stephen R. Patton, Corporation Counsel of the City of Chicago, hereby submit their Local Rule 56.1(a)(3) statement of material facts to which there are no genuine issues and which entitle Defendants to judgment on Count I of Plaintiffs’ Fourth Amended Complaint as a matter of law.

Parties

1. Plaintiff R. Joseph Franzese (“Franzese”) is a citizen of the United States who resides in Hainesville, Illinois. Plaintiffs’ Fourth Amended Complaint (“Compl.”) ¶ 2; Plaintiffs’ Answer to Defendants’ Third Set of Interrogatories (“Pl. Resp. to Interrog.”) (attached hereto as Ex A) No. 1.

2. Plaintiff Second Amendment Arms (“SAA”) was an entity owned by Plaintiff Franzese and under which Plaintiff Franzese did business. Compl. ¶ 2; Pl. Resp. to Interrog. No. 4.

3. Plaintiff Tony Kole is a citizen of the United States who resides in Waukegan, Illinois. Compl. ¶ 4; Pl. Resp. to Interrog. No. 3.

4. Defendant City of Chicago (“City”) is a municipal entity organized under the Constitution and laws of the State of Illinois. Compl. ¶ 5; Defendants’ Answer & Affirmative Defenses to Plaintiffs’ Third Amended Complaint (“Answer”) ¶ 5.

5. Defendant Rahm Emanuel is Mayor of the City of Chicago and named as a defendant in his official capacity. Compl. ¶ 6; Answer ¶ 6.

6. Defendant Eddie Johnson is the Superintendent of the Chicago Police Department. Superintendent Johnson replaced former Superintendent Garry McCarthy, who was named as a defendant in his official capacity. Compl. ¶ 7; Answer ¶ 7.

7. Defendant Susana Mendoza is the Clerk of the City of Chicago and named as a defendant in her official capacity. Compl. ¶ 8; Answer ¶ 8.

Jurisdiction and Venue

8. Plaintiffs here raise claims under the Second Amendment of the United States Constitution, and accordingly, this Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983.

9. The City of Chicago is located within the Northern District of Illinois of the United States District Court, and accordingly, venue is proper under 28 U.S.C. § 1331.

Undisputed Material Facts

10. Franzese submitted an application to the City on July 2, 2010 (attached hereto as Exhibit B) for SAA to obtain a business license to sell firearms at 415 West Armitage Avenue, Floor 1, Chicago, Illinois 60614.

11. At the time Franzese submitted his application for SAA to obtain a business license, 415 West Armitage was zoned RM-5. See Declaration of Patti Scudiero (attached hereto as Exhibit C) ¶¶ 9-11. The zoning for the property located at 415 West Armitage since Franzese submitted his application has been RM-5. Id. ¶¶ 9-10, 12.

12. RM-5 is a residential zoning classification that does not permit business or retail uses, either as of right or as a special use. See Municipal Code of Chicago § 17-2-0207 (attached hereto as Exhibit D).

13. The City ordinance banning the sale of firearms was enacted by the City Council on July 2, 2010, and it became effective on July 12, 2010. See Journal of July 2, 2010 City Council Proceedings (attached hereto as Exhibit E) at 96235, 96265. That ban was repealed on June 25, 2014, effective immediately. See Journal of June 25, 2014 City Council Proceedings (attached hereto as Exhibit F) at 83727, 83760.

14. During the period from January 1, 2010 to June 25, 2014, the only location for which Franzese or SAA submitted an application to the City of Chicago for a business license to open a retail establishment at which firearms would be sold was 415 W. Armitage, Chicago, Illinois. See Defs.' First Set of Requests for Admission to Pls. SAA and Franzese (attached hereto with proof of service documents as Exhibit G).¹

¹ Plaintiffs provided no response to Defendants' Request for Admission within 30 days of service. Under Rule 36 of the Federal Rules of Civil Procedure, all facts set forth in the Request are therefore deemed true.

Date: November 29, 2016

Respectfully submitted,

STEPHEN R. PATTON,
Corporation Counsel of the City of Chicago

By: /s/ David M. Baron
Assistant Corporation Counsel

William Macy Aguiar
David M. Baron
Ellen McLaughlin
City of Chicago, Department of Law
Constitutional and Commercial Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 744-7686 / 744-9018 / 742-5147

Attorneys for Defendants